

ADMINISTRATIVE APPEAL OF TOM BEN
v.
EASTERN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 77-39-A

Decided July 8, 1977

Appeal from a decision of the Eastern Area Director, Bureau of Indian Affairs, affirming Superintendent, Choctaw Agency, concerning title to certain lands.

Affirmed.

APPEARANCES: Tom Ben, appellant, pro se.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal to the Commissioner of Indian Affairs from the January 28, 1977, decision of the Director, Eastern Area Office, Bureau of Indian Affairs, after decision by the Superintendent, Choctaw Agency, dated October 29, 1975.

The matter was referred to the Board of Indian Appeals for the reason that under current organizational and operational procedures of the Bureau of Indian Affairs it would be inappropriate and not in the best interest of the appellant for the Commissioner to issue a decision.

The pertinent facts in this matter are undisputed and set forth in the Superintendent, Choctaw Agency, decision of October 29, 1975. Accordingly, they are not repeated here.

The Superintendent concluded the appellant did not have a valid claim to the land in question. The Area Director among other things on appeal found the appellant had continuously used and occupied said property since the death of his father, Wyatt Ben, in 1934; that permanent improvements had been made on the property; that appellant's occupancy predated the establishment of a constitution and bylaws for the Choctaw Indians of Mississippi; and that Choctaw Tribal consent was acquired through acquiescence of the United States and the Choctaw Indians. Tribal consent stems from a tacit understanding

recognizing appellant's occupancy of the property. The Area Director concluded the appellant holds a superior claim to the property as against the world with the exception of the United States and the Choctaw Indians.

Consideration has been given to the complete record and contentions of the appellant. We find no merit to appellant's contentions and conclude that appellant holds a superior claim to the property as against the world with the exception of the United States and the Choctaw Tribe of Indians. Thus as an individual member of the Choctaw Indians of Mississippi the appellant would be entitled to use and occupy the tribal land in question. We cannot agree that the appellant was unfairly treated or that the land was taken without due process.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2), the decision of the Director, Eastern Area Office, Bureau of Indian Affairs, dated January 28, 1977, is AFFIRMED and the appeal is hereby DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

Mitchell J. Sabagh
Administrative Judge

I concur:

Alexander H. Wilson
Chief Administrative Judge